

**Proposed Substitute
Bill No. 5571**

LCO No. 3115

**AN ACT CONCERNING CONSUMER COLLECTION AGENCIES AND
DEBT COLLECTION ACTIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-800 of the 2016 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2016*):

4 As used in [sections 36a-800] this section and sections 36a-801 to
5 36a-812, inclusive, as amended by this act, unless the context otherwise
6 requires:

7 (1) "Branch office" means a location other than the main office at
8 which a licensee or any person on behalf of a licensee acts as a
9 consumer collection agency;

10 (2) "Consumer collection agency" means any person (A) engaged as
11 a third party in the business of collecting or receiving [for] payment for
12 others [of] on any account, bill or other indebtedness from a consumer
13 debtor, (B) engaged directly or indirectly in the business of collecting
14 on any account, bill or other indebtedness from a consumer debtor for
15 such person's own account if the indebtedness was acquired from
16 another person and if the indebtedness was either delinquent or in
17 default at the time it was acquired, or (C) engaged in the business of

18 collecting or receiving [for payment property] tax payments, including,
19 but not limited to, property tax and federal income tax payments, from
20 a property tax or federal income tax debtor on behalf of a municipality
21 or the United States Department of Treasury, including, but not
22 limited to, any person who, by any device, subterfuge or pretense,
23 makes a pretended purchase or takes a pretended assignment of
24 accounts from any other person, [or] municipality or taxing authority
25 of such indebtedness for the purpose of evading the provisions of
26 [sections 36a-800] this section and sections 36a-801 to 36a-812,
27 inclusive, as amended by this act. [It] "Consumer collection agency"
28 includes persons who furnish collection systems carrying a name
29 which simulates the name of a consumer collection agency and who
30 supply forms or form letters to be used by the creditor, even though
31 such forms direct the consumer debtor, [or] property tax debtor or
32 federal income tax debtor to make payments directly to the creditor
33 rather than to such fictitious agency. "Consumer collection agency"
34 further includes any person who, in attempting to collect or in
35 collecting such person's own accounts or claims from a consumer
36 debtor, uses a fictitious name or any name other than such person's
37 own name which would indicate to the consumer debtor that a third
38 person is collecting or attempting to collect such account or claim.
39 "Consumer collection agency" does not include (i) an individual
40 employed on the staff of a licensed consumer collection agency, or by a
41 creditor who is exempt from licensing, when attempting to collect on
42 behalf of such consumer collection agency, (ii) persons not primarily
43 engaged in the collection of debts from consumer debtors who receive
44 funds in escrow for subsequent distribution to others, including, but
45 not limited to, real estate brokers and lenders holding funds of
46 borrowers for payment of taxes or insurance, (iii) any public officer or
47 a person acting under the order of any court, (iv) any member of the
48 bar of this state, (v) a person who services loans or accounts for the
49 owners thereof when the arrangement includes, in addition to
50 requesting payment from delinquent consumer debtors, the providing
51 of other services such as receipt of payment, accounting, record-
52 keeping, data processing services and remitting, for loans or accounts

53 which are current as well as those which are delinquent, (vi) a bank or
54 out-of-state bank, as defined in section 36a-2, and (vii) a subsidiary or
55 affiliate of a bank or out-of-state bank, provided such affiliate or
56 subsidiary is not primarily engaged in the business of purchasing and
57 collecting upon delinquent debt, other than delinquent debt secured by
58 real property. Any person not included in the definition contained in
59 this subdivision is, for purposes of sections 36a-645 to 36a-647,
60 inclusive, a "creditor", as defined in section 36a-645;

61 (3) "Consumer debtor" means any natural person, not an
62 organization, who has incurred indebtedness or owes a debt for
63 personal, family or household purposes, including current or past due
64 child support, [or] who has incurred indebtedness or owes a debt to a
65 municipality due to a levy by such municipality of a personal property
66 tax or who has incurred indebtedness or owes a debt to the United
67 States Department of Treasury under the Internal Revenue Code of
68 1986, or any subsequent corresponding internal revenue code of the
69 United States, as amended from time to time;

70 (4) "Creditor" means a person, including, but not limited to, a
71 municipality or the United States Department of Treasury, that retains,
72 hires, or engages the services of a consumer collection agency;

73 (5) "Federal income tax" means all federal taxes levied on the income
74 of a natural person or organization by the United States Department of
75 Treasury under the Internal Revenue Code of 1986, or any subsequent
76 corresponding internal revenue code of the United States, as amended
77 from time to time;

78 (6) "Federal income tax debtor" means any natural person or
79 organization who owes a debt to the United States Department of
80 Treasury;

81 [(5)] (7) "Main office" means the main address designated on the
82 application;

83 [(6)] (8) "Municipality" means any town, city or borough,

84 consolidated town and city, consolidated town and borough, district as
85 defined in section 7-324 or municipal special services district
86 established under chapter 105a;

87 [(7)] (9) "Organization" means a corporation, partnership,
88 association, trust or any other legal entity or an individual operating
89 under a trade name or a name having appended to it a commercial,
90 occupational or professional designation;

91 [(8)] (10) "Property tax" has the meaning given to the term in section
92 7-560; and

93 [(9)] (11) "Property tax debtor" means any natural person or
94 organization who has incurred indebtedness or owes a debt to a
95 municipality due to a levy by such municipality of a property tax.

96 Sec. 2. Subsection (a) of section 36a-801 of the 2016 supplement to
97 the general statutes is repealed and the following is substituted in lieu
98 thereof (*Effective October 1, 2016*):

99 (a) No person shall act within this state as a consumer collection
100 agency unless such person has first obtained a consumer collection
101 agency license for such person's main office and each branch office
102 where such person's business is conducted. A consumer collection
103 agency is acting within this state if it (1) has its place of business
104 located within this state; (2) has its place of business located outside
105 this state and (A) collects from consumer debtors, [or] property tax
106 debtors or federal income tax debtors who reside within this state for
107 creditors who are located within this state, or (B) collects from
108 consumer debtors, [or] property tax debtors or federal income tax
109 debtors who reside within this state for such consumer collection
110 agency's own account; (3) has its place of business located outside this
111 state and regularly collects from consumer debtors, [or] property tax
112 debtors or federal income tax debtors who reside within this state for
113 creditors who are located outside this state; or (4) has its place of
114 business located outside this state and is engaged in the business of
115 collecting child support for creditors located within this state from

116 consumer debtors who are located outside this state.

117 Sec. 3. Subsection (a) of section 36a-802 of the general statutes is
118 repealed and the following is substituted in lieu thereof (*Effective*
119 *October 1, 2016*):

120 (a) No such license and no renewal thereof shall be granted to a
121 third party consumer collection agency unless the applicant has filed
122 with the commissioner a bond to the people of the state in the penal
123 sum of twenty-five thousand dollars, approved by the Attorney
124 General as to form and by the commissioner as to sufficiency of the
125 security thereof. Such bond shall be conditioned that such licensee
126 shall well, truly and faithfully account for all funds entrusted to the
127 licensee and collected and received by the licensee in the licensee's
128 capacity as a consumer collection agency. Any person who may be
129 damaged by the wrongful conversion of any creditor, consumer
130 debtor, [or] property tax debtor or federal income tax debtor funds
131 received by such consumer collection agency may proceed on such
132 bond against the principal or surety thereon, or both, to recover
133 damages. The commissioner may proceed on such bond against the
134 principal or surety thereon, or both, to collect any civil penalty
135 imposed upon the licensee pursuant to subsection (a) of section 36a-50.
136 The proceeds of the bond, even if commingled with other assets of the
137 licensee, shall be deemed by operation of law to be held in trust for the
138 benefit of such claimants against the licensee in the event of
139 bankruptcy of the licensee and shall be immune from attachment by
140 creditors and judgment creditors. The bond shall run concurrently
141 with the period of the license granted to the applicant, and the
142 aggregate liability under the bond shall not exceed the penal sum of
143 the bond.

144 Sec. 4. Subsection (a) of section 36a-805 of the 2016 supplement to
145 the general statutes is repealed and the following is substituted in lieu
146 thereof (*Effective October 1, 2016*):

147 (a) No consumer collection agency shall: (1) Furnish legal advice or
148 perform legal services or represent that it is competent to do so, or

149 institute judicial proceedings on behalf of others; (2) communicate with
150 consumer debtors, [or] property tax debtors or federal income tax
151 debtors in the name of an attorney or upon the stationery of an
152 attorney, or prepare any forms or instruments which only attorneys
153 are authorized to prepare; (3) receive assignments as a third party of
154 claims for the purpose of collection or institute suit thereon in any
155 court; (4) assume authority on behalf of a creditor to employ or
156 terminate the services of an attorney unless such creditor has
157 authorized such agency in writing to act as such creditor's agent in the
158 selection of an attorney to collect the creditor's accounts; (5) demand or
159 obtain in any manner a share of the proper compensation for services
160 performed by an attorney in collecting a claim, whether or not such
161 agency has previously attempted collection thereof; (6) solicit claims
162 for collection under an ambiguous or deceptive contract; (7) refuse to
163 return any claim or claims upon written request of the creditor,
164 claimant or forwarder, which claims are not in the process of collection
165 after the tender of such amounts, if any, as may be due and owing to
166 the agency; (8) advertise or threaten to advertise for sale any claim as a
167 means of forcing payment thereof, unless such agency is acting as the
168 assignee for the benefit of creditors; (9) refuse or fail to account for and
169 remit to its clients all money collected which is not in dispute within
170 sixty days from the last day of the month in which said money is
171 collected; (10) refuse or intentionally fail to return to the creditor all
172 valuable papers deposited with a claim when such claim is returned;
173 (11) refuse or fail to furnish at intervals of not less than ninety days,
174 upon the written request of the creditor, claimant or forwarder, a
175 written report upon claims received from such creditor, claimant or
176 forwarder; (12) add any post charge-off charge or fee for cost of
177 collection, unless such cost is a court cost, to the amount of any claim
178 which it receives for collection or knowingly accept for collection any
179 claim to which any such charge or fee has already been added to the
180 amount of the claim unless (A) the consumer debtor is legally liable for
181 such charge or fee as determined by the contract or other evidence of
182 an agreement between the consumer debtor and creditor, a copy of
183 which shall be obtained by or available to the consumer collection

184 agency from the creditor and maintained as part of the records of the
185 consumer collection agency or the creditor, or both, and (B) the total
186 charge or fee for cost of collection does not exceed fifteen per cent of
187 the total amount actually collected and accepted as payment in full
188 satisfaction of the debt; (13) use or attempt to use or make reference to
189 the term "bonded by the state of Connecticut", "bonded" or "bonded
190 collection agency" or any combination of such terms or words, except
191 [that] the word "bonded" may be used on the stationery of any such
192 agency in type not larger than twelve-point; (14) when the debt is
193 beyond the statute of limitations, fail to provide the following
194 disclosure in type not less than ten-point informing the consumer
195 debtor in its initial communication with such consumer debtor that (A)
196 when collecting on debt that is not past the date for obsolescence
197 provided for in Section 605(a) of the Fair Credit Reporting Act, 15 USC
198 1681c: "The law limits how long you can be sued on a debt. Because of
199 the age of your debt, (INSERT OWNER NAME) will not sue you for it.
200 If you do not pay the debt, (INSERT OWNER NAME) may report or
201 continue to report it to the credit reporting agencies as unpaid"; and
202 (B) when collecting on debt that is past the date for obsolescence
203 provided for in Section 605(a) of the Fair Credit Reporting Act, 15 USC
204 1681c: "The law limits how long you can be sued on a debt. Because of
205 the age of your debt, (INSERT OWNER NAME) will not sue you for it
206 and (INSERT OWNER NAME) will not report it to any credit
207 reporting agencies."; [or] (15) notwithstanding any other provision of
208 law, demand, add, impose or obtain in any manner any interest, fee,
209 charge or expense incidental to the principle obligation for collection
210 from the consumer debtor; or (16) engage in any activities prohibited
211 by sections 36a-800 to 36a-812, inclusive, as amended by this act.

212 Sec. 5. Subsection (b) of section 36a-811 of the general statutes is
213 repealed and the following is substituted in lieu thereof (*Effective*
214 *October 1, 2016*):

215 (b) Each third party consumer collection agency shall deposit funds
216 collected or received from consumer debtors for payment for others on
217 an account, bill or other indebtedness in one or more trust accounts

218 maintained at a federally insured bank, Connecticut credit union,
219 federal credit union or an out-of-state bank that maintains in this state
220 a branch as defined in section 36a-410, which accounts shall be
221 reconciled monthly. Such funds shall not be commingled with funds of
222 the consumer collection agency or used in the conduct of the consumer
223 collection agency's business. Such account shall not be used for any
224 purpose other than (1) the deposit of funds received from consumer
225 debtors, (2) the payment of such funds to creditors, (3) the refund of
226 any overpayments to be made to consumer debtors, and (4) the
227 payment of earned fees to the consumer collection agency, which shall
228 be withdrawn on a monthly basis. Except for payments authorized by
229 subdivisions (2) to (4), inclusive, of this subsection, any withdrawal
230 from such account, including, but not limited to, any service charge or
231 other fee imposed against such account by a depository institution,
232 shall be reimbursed by the consumer collection agency to such account
233 not more than thirty days after the withdrawal. Funds received from
234 consumer debtors shall be posted to their respective accounts in
235 accordance with generally accepted accounting [practices] principles.

236 Sec. 6. (NEW) (*Effective October 1, 2016*) In any cause of action
237 initiated by a creditor, as defined in section 36a-645 of the general
238 statutes, or by a consumer collection agency, as defined in section 36a-
239 800 of the general statutes, as amended by this act, for a liability on
240 debt owed by a consumer debtor, as defined in section 36a-645 of the
241 general statutes, the creditor or consumer collection agency shall attach
242 the following materials to the complaint:

243 (1) A copy of the contract or other documentation evidencing the
244 original debt and containing a signature of the consumer debtor or, if
245 the debt is credit card debt and no such signed documentation exists,
246 copies of the documentation generated when the credit card was used;
247 and

248 (2) A copy of the assignment or other documentation (A)
249 establishing that the plaintiff creditor is the owner of the debt, (B)
250 containing the original account number and name associated with the

251 debt, and (C) if the debt has been assigned more than once, a copy of
252 each assignment or other documentation that establishes an unbroken
253 chain of ownership of the debt by the plaintiff creditor.

254 Sec. 7. (NEW) (*Effective October 1, 2016*) (a) For purposes of this
255 section:

256 (1) "Charge-off" means the declaration by a creditor, as defined in
257 subdivision (2) of section 36a-645 of the general statutes, that a debt is
258 uncollectable and has been written off as a bad debt expense on the
259 creditor's income statement and removed from its balance sheet; and

260 (2) "Privilege log" means a document that describes documents or
261 other items withheld from production in a civil lawsuit in a manner
262 that will enable other parties to assess the claim of privilege.

263 (b) In any cause of action initiated by a creditor or consumer
264 collection agency, as defined in section 36a-800 of the general statutes,
265 as amended by this act, for liability on debt owed by a consumer
266 debtor, the creditor or consumer collection agency shall file evidence
267 with the court to establish the amount and nature of the debt prior to
268 entry of a default judgment or summary judgment against the
269 consumer debtor by the court.

270 (c) The evidence presented by the creditor or consumer collection
271 agency in accordance with subsection (b) of this section shall be duly
272 authenticated and admissible in accordance with the rules of evidence
273 and contain not less than the following items:

274 (1) The original account number associated with the debt;

275 (2) The identity of the original creditor, as defined in subparagraph
276 (A) of subdivision (2) of section 36a-645 of the general statutes, to
277 whom the debt is owed;

278 (3) The amount of the original debt;

279 (4) An itemization of charges and fees to be owed by the consumer

280 debtor, including interest claimed on the debt and the basis for such
281 interest;

282 (5) The original charge-off balance on the debt, if applicable;

283 (6) An itemization of post charge-off charges, if applicable;

284 (7) The date of the last payment by the consumer debtor, if
285 applicable; and

286 (8) The names of all persons or entities that owned the consumer
287 debt after the original creditor, if applicable.

288 (d) A creditor or consumer collection agency shall indicate when
289 any of the items referenced in subsection (c) of this section have been
290 redacted and submit a privilege log to the court.

291 (e) A creditor or consumer collection agency shall provide the items
292 identified in subsection (c) of this section to the consumer debtor in
293 writing not later than five business days after the initial
294 communication with the consumer debtor and shall cease all collection
295 of the debt owed by the consumer until such information is provided.

296 (f) No creditor or consumer collection agency shall initiate a cause of
297 action to collect debt owed by a consumer when the debt collector
298 knows or reasonably should know that the applicable statute of
299 limitations on such cause of action has expired.

300 (g) Notwithstanding any other provision of law, when the
301 applicable statute of limitations on a cause of action to collect debt
302 owed by a consumer has expired, any subsequent payment toward or
303 written or oral affirmation of the debt owed by the consumer shall not
304 extend the limitations period within which the creditor or consumer
305 debtor may bring the cause of action.

306 Sec. 8. Subsection (a) of section 36a-648 of the general statutes is
307 repealed and the following is substituted in lieu thereof (*Effective*
308 *October 1, 2016*):

309 (a) A creditor, as defined in section 36a-645, or consumer collection
310 agency, as defined in section 36a-800, as amended by this act, who uses
311 any abusive, harassing, fraudulent, deceptive or misleading
312 representation, device or practice to collect or attempt to collect a debt
313 in violation of section 36a-646, section 6 or 7 of this act or the
314 regulations adopted pursuant to section 36a-647 shall be liable to a
315 person who is harmed by such conduct in an amount equal to the sum
316 of: (1) Any actual damages sustained by such person, (2) if such person
317 is an individual, such additional damages as the court may award, not
318 to exceed one thousand dollars, and (3) in the case of any successful
319 action to enforce liability under the provisions of this subsection, the
320 costs of the action and, in the discretion of the court, a reasonable
321 attorney's fee.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2016</i>	36a-800
Sec. 2	<i>October 1, 2016</i>	36a-801(a)
Sec. 3	<i>October 1, 2016</i>	36a-802(a)
Sec. 4	<i>October 1, 2016</i>	36a-805(a)
Sec. 5	<i>October 1, 2016</i>	36a-811(b)
Sec. 6	<i>October 1, 2016</i>	New section
Sec. 7	<i>October 1, 2016</i>	New section
Sec. 8	<i>October 1, 2016</i>	36a-648(a)